Single Bench (1)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

M.C.C. NO. 277 /2006

(IN W.P. NO. 1320/2001)

APPLICANT : ~~Bharat~~ Bhilai Refractories Limited
Bhilai Refracotries Plant
Through : Dy.General Manager Incharge
Bhilai Refractories Plant Maroda,
Bhilai Nagar, Distt. Durg (C.G.)

(B)

VERSUS

RESPONDENTS : Chandra Prakash Pandey
S/o. Late Shri Rama Shankar Pandey
Aged about 46 years,
Machine Tools Operator,
Resident of Masanganj, Bilaspur
Tahsil & Distt. Bilaspur (C.G.)

REVIEW PETITION OF ORDER DATED 03.03.2006, PASSED IN W.P. NO.1320/2001, BY HON'BLE JUSTICE SHRI S.K. AGNIHOTRI

The applicant submits as under :-

(17)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

M.C.C. No. 277 OF 2006

Petitioner : Bhilai Refractories Plant Ltd.

Versus

Respondent : Chandra Prakash Pandey

Shri R.M. Solapurkar, counsel for the petitioner.

None for the respondent.

ORAL ORDER

(12th June, 2006)

1. The present application seeks for review of the order dated 3.3.2006 passed in W.P. No. 1320/2001. The present application is filed with an application for condonation of delay in filing this application, as this application is filed with 12 days delay.

2. Review petitioner seeks re-hearing of the entire matter on the new ground that on 12.3.2001 the respondent/employee committed an offence under Section 376, 493 and 506 of IPC and his services were terminated on the report of police.

3. The service of the petitioner was terminated by order dated 24.3.2001 not on the ground of police complaint, but on the ground of absence from duty, for the period 11.3.2001 to 24.3.2001.

(18)

4. In the main petition termination order was considered at length and after hearing both the parties the petition was allowed.

5. After hearing learned counsel for the review petitioner and perusing the records, I have not found any ground for entertaining this application for review on the ground of error apparent on the face of record.

6. The Supreme Court in the case of **M/s Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi** { (1980) 2 S.C.C. 167} in para-8 observed as under:-

> "8. It is well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so: Sajjan Singh v. State of Rajasthan. For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing, the Court will review its judgment: G.L. Gupta v. D.N. Mehta. The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice: O.N. Mohindroo v. Distt. Judge, Delhi. Power to review its judgment has been conferred on the Supreme Court by Article 137 of the Constitution, and that power is subject to the provisions of any law made by Parliament or the rules made under Article 145. In a civil proceeding, an application for review is entertained only on a ground mentioned in Order 47 Rule 1 of the Code of Civil Procedure, and in a criminal proceeding on the

ground of an error apparent on the face of the record (Order XL, Rule 1, Supreme Court Rules, 1966). But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except "where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility": Sow Chandran Kante v. Sheikh Habib"

7. Review lies on any of the grounds specified under Order 47 Rule 1 of the Code of Civil Procedure which provides:-

"1.Application for review of judgment-(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed, or

© by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

2.A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to

the Appellate Court the case on which he applies for the review.

(Explanation----The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.)"

8. The Supreme Court in **Government of T.N. and others Vs. M. Ananchu Asari and others** { (2005) 2 SCC 332} observed as under:-

> "3. .....If the petitioners failed to furnish the necessary material even during the pendency of appeal in this Court, that is no ground to review the judgment....."

9. In the case of **Kerala State Electricity Board Vs. Hitech Electrothermics & Hydropower Ltd. and others** { (2005) 6 S.C.C. 651} the Supreme Court observed as under:-

> "10. ....."To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise."

10. From the above-stated observations made by the Supreme Court, it is clear that the review petitioner has made an attempt to seek re-hearing of the matter afresh, on the ground which was not the issue in the main writ petition as the impugned termination order dated 24.3.2001 was passed on the ground of absence from duty.

11. Accordingly, the petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Court